



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2807

Introduced 1/20/2006, by Sen. James F. Clayborne, Jr. - Todd Sieben - Dave Syverson and Mike Jacobs

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-117-1.1	
220 ILCS 5/3-105	from Ch. 111 2/3, par. 3-105
220 ILCS 5/3-121	from Ch. 111 2/3, par. 3-121
220 ILCS 5/4-202.1	
220 ILCS 5/19-105	
805 ILCS 105/103.05	from Ch. 32, par. 103.05

Amends the Illinois Municipal Code. Provides that a municipality and a natural gas cooperative may voluntarily enter into an agreement defining the geographic areas in which each party shall provide retail natural gas service for certain reasons. Provides that a natural gas cooperative shall enter into such an agreement only if the natural gas cooperative has acquired the operating assets of a public utility or natural gas cooperative with the intention of operating those assets as a natural gas cooperative. Amends the Public Utilities Act. Defines "public utility" to exclude natural gas cooperatives that are not-for-profit corporations operated for the purpose of administering, on a cooperative basis, the furnishing of natural gas for the benefit of their members and that have acquired the operating assets of a public utility or natural gas cooperative with the intention of operating those assets as a natural gas cooperative. Amends the General Not For Profit Corporation Act of 1986. Provides that not-for-profit corporations may be organized for the purpose of furnishing natural gas on a cooperative basis. Makes other changes. Effective immediately.

LRB094 17551 MKM 52847 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Municipal Code is amended by
5 changing Section 11-117-1.1 as follows:

6 (65 ILCS 5/11-117-1.1)

7 Sec. 11-117-1.1. Service area agreement with electric
8 cooperative.

9 (a) The General Assembly declares it to be in the public
10 interest that a municipality and an electric cooperative (as
11 defined in the Electric Supplier Act) or a natural gas
12 cooperative (as defined in the Public Utilities Act) may
13 voluntarily enter into an agreement defining the geographic
14 areas in which each party shall provide retail electric service
15 or retail natural gas service, and, if agreed, such service may
16 be exclusive. This authority is in the public interest for the
17 following reasons:

18 (1) To avoid duplication of facilities for the
19 production, transmission, sale, delivery, or furnishing of
20 electricity or natural gas.

21 (2) To minimize disputes between (i) municipalities
22 that own and operate a municipal utility for the purpose of
23 providing retail electric service or retail natural gas
24 service and (ii) electric cooperatives concerning the
25 provision of electric service or natural gas cooperatives
26 concerning the provision of natural gas service, since
27 these disputes may result in inconvenience and diminished
28 efficiency in providing electric service or natural gas
29 service to the public.

30 (3) To provide for the orderly and controlled growth of
31 municipalities and surrounding areas.

32 (4) To recognize and protect the investment and

1 commitment of municipalities and electric cooperatives and
2 of municipalities and natural gas cooperatives to provide
3 retail ~~electric~~ service within their respective service
4 areas.

5 (b) An agreement entered into under this Section may cover
6 geographic areas both within and without the corporate limits
7 of a municipality.

8 (c) An agreement entered into under this Section shall be
9 subject to the approval of the Illinois Commerce Commission. An
10 approved agreement may be enforced only by a party to the
11 agreement by the filing of a complaint for interpretation with
12 the Illinois Commerce Commission. The jurisdiction and
13 authority of the Illinois Commerce Commission over any
14 municipality which owns and operates a municipal utility for
15 the purpose of providing retail electric service or retail
16 natural gas service shall be strictly limited to the approval
17 of the agreement and the interpretation of the agreement's
18 terms. The Commission shall have no other jurisdiction over or
19 authority to review or approve the construction of any project
20 or operations of any municipality which is or may be a party to
21 an agreement under this Section or joint action agency to which
22 the municipality may be a member except to the extent now
23 required in connection with the initiation of proceedings in
24 eminent domain. In a proceeding to approve an agreement or
25 interpret the terms of an agreement, the agreement shall be
26 construed consistently with the public policy of this State as
27 set forth in this Section.

28 (c-5) A natural gas cooperative shall enter into an
29 agreement under this Section only if the natural gas
30 cooperative has acquired the operating assets of a public
31 utility or a natural gas cooperative with the intention of
32 operating those assets as a natural gas cooperative.

33 (d) The provisions of this Section are severable under
34 Section 1.31 of the Statute on Statutes.

35 (Source: P.A. 88-335.)

1 Section 10. The Public Utilities Act is amended by changing
2 Sections 3-105, 3-121, 4-202.1, and 19-105 as follows:

3 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

4 Sec. 3-105. Public utility. "Public utility" means and
5 includes, except where otherwise expressly provided in this
6 Section, every corporation, company, limited liability
7 company, association, joint stock company or association,
8 firm, partnership or individual, their lessees, trustees, or
9 receivers appointed by any court whatsoever that owns,
10 controls, operates or manages, within this State, directly or
11 indirectly, for public use, any plant, equipment or property
12 used or to be used for or in connection with, or owns or
13 controls any franchise, license, permit or right to engage in:

14 a. the production, storage, transmission, sale,
15 delivery or furnishing of heat, cold, power, electricity,
16 water, or light, except when used solely for communications
17 purposes;

18 b. the disposal of sewerage; or

19 c. the conveyance of oil or gas by pipe line.

20 "Public utility" does not include, however:

21 1. public utilities that are owned and operated by any
22 political subdivision, public institution of higher
23 education or municipal corporation of this State, or public
24 utilities that are owned by such political subdivision,
25 public institution of higher education, or municipal
26 corporation and operated by any of its lessees or operating
27 agents;

28 2. water companies which are purely mutual concerns,
29 having no rates or charges for services, but paying the
30 operating expenses by assessment upon the members of such a
31 company and no other person;

32 3. electric cooperatives as defined in Section 3-119;

33 4. the following natural gas cooperatives:

34 (A) residential natural gas cooperatives that are
35 not-for-profit corporations established for the

1 purpose of administering and operating, on a
2 cooperative basis, the furnishing of natural gas to
3 residences for the benefit of their members who are
4 residential consumers of natural gas. For entities
5 qualifying as residential natural gas cooperatives and
6 recognized by the Illinois Commerce Commission as
7 such, the State shall guarantee legally binding
8 contracts entered into by residential natural gas
9 cooperatives for the express purpose of acquiring
10 natural gas supplies for their members. The Illinois
11 Commerce Commission shall establish rules and
12 regulations providing for such guarantees. The total
13 liability of the State in providing all such guarantees
14 shall not at any time exceed \$1,000,000, nor shall the
15 State provide such a guarantee to a residential natural
16 gas cooperative for more than 3 consecutive years;and

17 (B) natural gas cooperatives that are
18 not-for-profit corporations operated for the purpose
19 of administering, on a cooperative basis, the
20 furnishing of natural gas for the benefit of their
21 members and that or a natural gas cooperative have
22 acquired the operating assets of a public utility or
23 natural gas cooperative with the intention of
24 operating those assets as a natural gas cooperative;

25 5. sewage disposal companies which provide sewage
26 disposal services on a mutual basis without establishing
27 rates or charges for services, but paying the operating
28 expenses by assessment upon the members of the company and
29 no others;

30 6. (Blank);

31 7. cogeneration facilities, small power production
32 facilities, and other qualifying facilities, as defined in
33 the Public Utility Regulatory Policies Act and regulations
34 promulgated thereunder, except to the extent State
35 regulatory jurisdiction and action is required or
36 authorized by federal law, regulations, regulatory

1 decisions or the decisions of federal or State courts of
2 competent jurisdiction;

3 8. the ownership or operation of a facility that sells
4 compressed natural gas at retail to the public for use only
5 as a motor vehicle fuel and the selling of compressed
6 natural gas at retail to the public for use only as a motor
7 vehicle fuel; and

8 9. alternative retail electric suppliers as defined in
9 Article XVI.

10 (Source: P.A. 89-42, eff. 1-1-96; 90-561, eff. 12-16-97.)

11 (220 ILCS 5/3-121) (from Ch. 111 2/3, par. 3-121)

12 Sec. 3-121. As used in Section 2-202 of this Act, the term
13 "gross revenue" includes all revenue which (1) is collected by
14 a public utility subject to regulations under this Act (a)
15 pursuant to the rates, other charges, and classifications which
16 it is required to file under Section 9-102 of this Act and (b)
17 pursuant to emergency rates as permitted by Section 9-104 of
18 this Act, and (2) is derived from the intrastate public utility
19 business of such a utility. Such term does not include revenue
20 derived by such a public utility from the sale of public
21 utility services, products or commodities to another public
22 utility, ~~or~~ to an electric cooperative, or to a natural gas
23 cooperative for resale by such public utility, ~~or~~ electric
24 cooperative, or natural gas cooperative. "Gross revenue" shall
25 not include any charges added to customers' bills pursuant to
26 the provisions of Section 9-221, 9-221.1 and 9-222 of this Act
27 or consideration received from business enterprises certified
28 under Section 9-222.1 of this Act to the extent of such
29 exemption and during the period in which the exemption is in
30 effect.

31 (Source: P.A. 85-1021.)

32 (220 ILCS 5/4-202.1)

33 Sec. 4-202.1. Enforcement of service area agreement
34 between municipality and electric cooperative or natural gas

1 cooperative.

2 (a) The Commission shall approve, interpret, and enforce
3 service area agreements between municipalities and electric
4 cooperatives and service area agreements between
5 municipalities and natural gas cooperatives, as provided in
6 Section 11-117-1.1 of the Illinois Municipal Code.

7 (b) The provisions of this Section are severable under
8 Section 1.31 of the Statute on Statutes.

9 (Source: P.A. 88-335.)

10 (220 ILCS 5/19-105)

11 Sec. 19-105. Definitions. For the purposes of this Article,
12 the following terms shall be defined as set forth in this
13 Section.

14 "Alternative gas supplier" means every person,
15 cooperative, corporation, municipal corporation, company,
16 association, joint stock company or association, firm,
17 partnership, individual, or other entity, their lessees,
18 trustees, or receivers appointed by any court whatsoever, that
19 offers gas for sale, lease, or in exchange for other value
20 received to one or more customers, or that engages in the
21 furnishing of gas to one or more customers, and shall include
22 affiliated interests of a gas utility, resellers, aggregators
23 and marketers, but shall not include (i) gas utilities (or any
24 agent of the gas utility to the extent the gas utility provides
25 tariffed services to customers through an agent); (ii) public
26 utilities that are owned and operated by any political
27 subdivision, public institution of higher education or
28 municipal corporation of this State, or public utilities that
29 are owned by a political subdivision, public institution of
30 higher education, or municipal corporation and operated by any
31 of its lessees or operating agents; (iii) ~~residential~~ natural
32 gas cooperatives that are not-for-profit corporations operated
33 ~~established~~ for the purpose of administering ~~and operating~~, on
34 a cooperative basis, the furnishing of natural gas ~~to~~
35 ~~residences~~ for the benefit of their members who are ~~residential~~

1 consumers of natural gas; and (iv) the ownership or operation
2 of a facility that sells compressed natural gas at retail to
3 the public for use only as a motor vehicle fuel and the selling
4 of compressed natural gas at retail to the public for use only
5 as a motor vehicle fuel.

6 "Gas utility" means a public utility, as defined in Section
7 3-105 of this Act, that has a franchise, license, permit, or
8 right to furnish or sell gas or transportation services to
9 customers within a service area.

10 "Residential customer" means a customer who receives gas
11 utility service for household purposes distributed to a
12 dwelling of 2 or fewer units which is billed under a
13 residential rate or gas utility service for household purposes
14 distributed to a dwelling unit or units which is billed under a
15 residential rate and is registered by a separate meter for each
16 dwelling unit.

17 "Service area" means (i) the geographic area within which a
18 gas utility was lawfully entitled to provide gas to customers
19 as of the effective date of this amendatory Act of the 92nd
20 General Assembly and includes (ii) the location of any customer
21 to which the gas utility was lawfully providing gas utility
22 services on such effective date.

23 "Small commercial customer" means a nonresidential retail
24 customer of a natural gas utility who is identified by the
25 alternative gas supplier, prior to becoming a customer of the
26 alternative gas supplier, as consuming 5,000 or fewer therms of
27 natural gas during the previous year; provided that any
28 alternative gas supplier may remove the customer from
29 designation as a "small commercial customer" if the customer
30 consumes more than 5,000 therms of natural gas in any calendar
31 year after becoming a customer of the alternative gas supplier.

32 "Tariffed service" means a service provided to customers by
33 a gas utility as defined by its rates on file with the
34 Commission pursuant to the provisions of Article IX of this
35 Act.

36 "Transportation services" means those services provided by

1 the gas utility that are necessary in order for the storage,
2 transmission and distribution systems to function so that
3 customers located in the gas utility's service area can receive
4 gas from suppliers other than the gas utility and shall
5 include, without limitation, standard metering and billing
6 services.

7 (Source: P.A. 92-529, eff. 2-8-02; 92-852, eff. 8-26-02.)

8 Section 15. The General Not For Profit Corporation Act of
9 1986 is amended by changing Section 103.05 as follows:

10 (805 ILCS 105/103.05) (from Ch. 32, par. 103.05)

11 Sec. 103.05. Purposes and authority of corporations;
12 particular purposes; exemptions.

13 (a) Not-for-profit corporations may be organized under
14 this Act for any one or more of the following or similar
15 purposes:

- 16 (1) Charitable.
- 17 (2) Benevolent.
- 18 (3) Eleemosynary.
- 19 (4) Educational.
- 20 (5) Civic.
- 21 (6) Patriotic.
- 22 (7) Political.
- 23 (8) Religious.
- 24 (9) Social.
- 25 (10) Literary.
- 26 (11) Athletic.
- 27 (12) Scientific.
- 28 (13) Research.
- 29 (14) Agricultural.
- 30 (15) Horticultural.
- 31 (16) Soil improvement.
- 32 (17) Crop improvement.
- 33 (18) Livestock or poultry improvement.
- 34 (19) Professional, commercial, industrial, or trade

1 association.

2 (20) Promoting the development, establishment, or
3 expansion of industries.

4 (21) Electrification on a cooperative basis.

5 (22) Telephone service on a mutual or cooperative
6 basis.

7 (23) Ownership and operation of water supply
8 facilities for drinking and general domestic use on a
9 mutual or cooperative basis.

10 (24) Ownership or administration of residential
11 property on a cooperative basis.

12 (25) Administration and operation of property owned on
13 a condominium basis or by a homeowner association.

14 (26) Administration and operation of an organization
15 on a cooperative basis producing or furnishing goods,
16 services, or facilities primarily for the benefit of its
17 members who are consumers of those goods, services, or
18 facilities.

19 (27) Operation of a community mental health board or
20 center organized pursuant to the Community Mental Health
21 Act for the purpose of providing direct patient services.

22 (28) Provision of debt management services as
23 authorized by the Debt Management Service Act.

24 (29) Promotion, operation, and administration of a
25 ridesharing arrangement as defined in Section 1-176.1 of
26 the Illinois Vehicle Code.

27 (30) The administration and operation of an
28 organization for the purpose of assisting low-income
29 consumers in the acquisition of utility and telephone
30 services.

31 (31) Any purpose permitted to be exempt from taxation
32 under Sections 501(c) or 501(d) of the United States
33 Internal Revenue Code, as now in or hereafter amended.

34 (32) Any purpose that would qualify for tax-deductible
35 gifts under the Section 170(c) of the United States
36 Internal Revenue Code, as now or hereafter amended. Any

1 such purpose is deemed to be charitable under subsection
2 (a) (1) of this Section.

3 (33) Furnishing of natural gas on a cooperative basis.

4 (b) A corporation may be organized hereunder to serve in an
5 area that adjoins or borders (except for any intervening
6 natural watercourse) an area located in an adjoining state
7 intended to be similarly served, and the corporation may join
8 any corporation created by the adjoining state having an
9 identical purpose and organized as a not-for-profit
10 corporation. Whenever any corporation organized under this Act
11 so joins with a foreign corporation having an identical
12 purpose, the corporation shall be permitted to do business in
13 Illinois as one corporation; provided (1) that the name, bylaw
14 provisions, officers, and directors of each corporation are
15 identical, (2) that the foreign corporation complies with the
16 provisions of this Act relating to the admission of foreign
17 corporation, and (3) that the Illinois corporation files a
18 statement with the Secretary of State indicating that it has
19 joined with a foreign corporation setting forth the name
20 thereof and the state of its incorporation.

21 (Source: P.A. 92-33, eff. 7-1-01.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.